IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 463 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI JIVANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
MR JB PARDIWALA for Appellant
MR MA BUKHARI, APP for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 19/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Appellant being aggrieved by an order made against him by the Sessions Judge, Valsad at Navsari on 15.4.96, convicting him for the offence punishable under Section 304 Part I of Indian Penal Code and sentencing him to undergo 10 years' rigorous imprisonment and fine of Rs. 2000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months, has preferred the present appeal.

#. It seems that the appellant preferred an appeal through jail also and the said appeal has been numbered as Criminal Appeal No. 355/96. Brief facts leading to the present prosecution in nutshell are as under.

#. Kantilal - P.W. 1 - father of deceased who was working in Loco Shed at Udhna was returning after job hours on 13.4.94 and was near Police Station at about 8.30 p.m. He was proceeding towards his home on foot. While he was at Suki Talavadi, one person known as Paresh met him and conveyed the information that Suresh (son of the informant) has sustained injuries by a knife. On questioning, Paresh stated that he does not know as to who caused injuries. P.W. 1 - Kantilal reached home and on the backside, he found his son Suresh on the Ota of the house of Mahesh Ishwar. On questioning Suresh, he conveyed that Mohanbhai, the shopkeeper has delivered him knife blows. He further stated that he had been to shop of Mohanbhai for purchasing `Zatpat' (Pan Masala). He had altercation with wife of Mohanbhai. Suresh further stated that in view of the altercation, Mohanbhai came out from his house with a knife and delivered blows. He further stated that he found injuries on the person of Suresh at three places, namely; stomach, backside and the shoulder. He was profusely bleeding. He further stated that in view of the hubbub, boys from the street came there. As they collected there, he called for a rickshaw. He further stated that Suresh was taken in a rickshaw to the Municipal Hospital, Valsad. Ashok accompanied him. He sat there for some time. Jamadar who was present there requested him to accompany him to the police station for lodging information. The FIR is produced at exh. 21. He has further stated in the evidence that he was at the police station. Ashok arrived at the police station to convey that Sursh has expired. In the cross-examination, he has stated that he must have reached home at about 8.45 p.m. to 9.00 p.m. Suresh was conscious and he had talked for about 5 minutes. He further stated that many persons collected there and amongst them Niruben and Anjanaben were also there. Names of others could not be stated as he could not remember. He further stated that it was darkness and

therefore, he could not recollect as to who were the persons present there. He stated that he did not convey anything to anybody about the incident including to the Police Jamadar. He stated that he was in the hospital for a period of about one and half an hour. He stated that in his presence, there was no talk with the Doctor. He stated that when the information was recorded, it was about 12.30 hrs. He went to the police station on foot and took about one and half an hour to reach the police station. He stated that the police station is at a distance of one kilometer from Valsad Hospital.

#. Niruben - P.W. 3 stated that at about 8.30 hrs. she was watching TV programme and at that time, Suresh came. He lied on the mattress. She questioned as to what has happened to him. Thereupon, he stated that Mohanbhai has delivered him knife blows. Just opposite TV, there was mattress. She took Suresh out of the house with the bed sheet. He was made to lie down on the Ota. She sent for her son-in-law Mahesh and her son Ashok. They came at about 9.30 p.m. It is her say that they came with a rickshaw and in the said rickshaw, Suresh was taken to the hospital. In the cross-examination, she stated that he was lying down on the mattress for about 5 minutes but she did not raise any shout. There was some hue and cry outside and the persons residing in the vicinity came. She stated that for about half an hour to 45 minutes, Suresh was lying on the Ota. When Suresh was taken to Ota, there were two or three persons. Soon after Paresh came, he was sent for calling her son and son-in-law. She has given names of others residing in the vicinity. She specifically stated that Suresh was lying on the Ota for about half an hour and at that time, except her daughter and herself, there was none. She specifically stated that none came during this period. She admitted that when Suresh came in the house, he was in bleeding condition. She stated that when she saw Suresh in bleeding condition, he was groaning in pain, however she did not make any arrangement for the treatment. She stated that in her presence, nobody had talked with Suresh. She has admitted that with Suresh and Kantibhai, she has got good relations.

#. Prosecution has examined Bharatbhai Durlabhbhai - P.W. 3, who came to the spot after hearing shouts at about 9.00 p.m. As there were bloodstains near the house of the accused, he got afraid. He stated that people were shouting near the house of Mahesh. His evidence is not helpful to prosecution for any purpose.

#. It would be relevant to consider the evidence of

Medical Expert at this stage. Dr. Ramratan Himmatram Ramavat P.W. 9 discharging duties as Medical Officer at Valsad Municipal Hospital stated that Suresh was brought to the hospital at about 10.00 p.m. He was brought to the hospital without police yadi. Suresh was in semiconscious condition. He was struggling violently. The Medical Officer specifically stated that the injured was brought to the hospital by Mahesh Ishwarbhai Patel, Arjunbhai and Satishbhai. It is they who conveyed that at about 8.30 p.m. at the bank of pond Mograwadi Talao, knife blows were inflicted on the person of Suresh. On examination, he found three injuries on the person of Sureshbhai. He described the injuries as under.

(i) Stab wound over epigastric region, of 2 x 2 cm.
(ii) Stab wound over left axilla of 1 x 1 cm.
(iii) Stab wound over left thigh, gluted and sacral region of 2 x 1 cm. size.
There was acute bleeding from all the wounds.

During the operation, the injured expired. Soon after the death, police station officer, Valsad was informed on telephone. There was congestion of blood at various places as found in column nos. 19 and 20 of the post-mortem note. Congestion was also noted in column no. 21 of post-mortem and reading the same, it appears that there was profuse bleeding internally as well. The doctor has observed in the post-mortem note that during operation, the patient suddenly went into cardio-respiratory shock. B.P. fell from 130 to 70 mm. Medicines were given including Dexona I/V even though there was bleeding from all the wounds. Doctor has stated in the post-mortem report that the cause of death is shock and haemorrhage resulting from haemo peritonium and a fibrogenia.

#. Mr. J.B. Pardiwala, learned advocate appearing for the accused submitted that the prosecution has suppressed important witnesses who were in a position to convey to the Court the manner in which the person sustained injuries. According to his submission, it is not that Ashok (who is not examined) and Kantilal P.W.1 who removed the injured to the hospital, but from the independent evidence, it transpires that Mahesh Ishwarbhai Patel, Arjunbhai and Satishbhai took the injured to the hospital. The prosecution has not placed any explanation for not examining these witnesses. He submitted that in the instant case, these three persons disclosed before the Medical Officer that in an incident

which took place on the bank of Mograwadi Talao, the injured sustained injuries and not at the place as suggested by Kantilal.

#. Mr. Pardiwala submitted that no bloodstain was noticed in the shop of Mohanbhai. On perusal of panchnama, it becomes clear that that there was no finding of bloodstain. He further submitted that if the injured sustained three serious injuries as indicated by the Medical Officer, then on account of profuse bleeding, the injured in all probabilities could not have uttered a single word after some time. For this purpose, he invited our attention to the evidence of the Medical Officer and the post-mortem report. The Medical Officer has stated that if the injured would have remained for about 00-30 minutes to 00-45 minutes, the patient would have profusely bled. In the cross-examination, he stated that the time of injury given to him was that of 8.00 p.m. He also stated that injury nos. 1 and 2 could have been caused by different weapons.

#. He requested the Court that keeping in mind the aforesaid comment, if the evidence of PW 10 is perused, it becomes clear that Kantilal gave his information 14.4.94 at 00-30 hours. Then police officer has also stated that Wardhy was received from the Municipal Hospital, Valsad conveying information that the injured has expired. Entry no. 3/94 is made in the station diary in his own handwriting. It is required to be noted that as stated by Kantilal, when he was at the police station, he was informed by Ashok that Suresh has expired. It is required to be noted that the information was given at 00-30 hrs. and it refers to injuries sustained by the deceased. Though he states that when he was in the police station for giving First Information Report, Ashok came and informed, may be after recording the F.I.R., but that is false as from the entry exh. 23, it is clear that the injured expired at 2.00 a.m. If he left the police station after lodging the information, it is difficult to believe that Ashok came to the police station and conveyed this information. Mr. Pardiwala submitted that therefore, in the instant case, no reliance can be placed on the evidence of highly interested witnesses. According to him, if the incident took place at the shop of Mohanbhai, there were many other independent persons who were nearabout the shop and none is examined and therefore, prosecution case becomes doubtful. Similarly, Mr. Pardiwala, learned counsel appearing for the appellant-accused submitted that before relying on dying declaration, evidence must be examined closely and corroboration is required as a rule prudence.

He drew our attention to the case of Heikrujam Chaoba Singh v. State of Manipur, [1999 AIR SCW 4181] where in para 3, the Court observed as under.

> "An oral dying declaration no doubt can form the basis of conviction, though Court seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability."

He submitted that in view of this principle laid down by the Apex Court, the Court must examine the evidence of two witnesses whether it is reliable or not. He submitted that the persons who took the deceased to the hospital having not been examined and reading the evidence of Medical Officer, it clearly transpires that neither Kantilal nor Ashok removed the injured to the hospital, and, therefore, their presence before Suresh was removed to the hospital is nothing but a got up story. He submitted that in view of this, no reliance can be placed on the evidence of Kantilal. He submitted that similarly evidence of Niruben is required to be rejected because firstly looking to the condition of the injured, the injured could not have made a statement and secondly, the first disclosure before the Medical Officer that the injured sustained injuries at a different place. When the persons as referred by the Medical Officer have taken the injured to the hospital, the possibility of the injured lying at the Ota of Niruben is highly doubtful. In view of what is stated hereinabove, we are of the view that the order or conviction cannot be upheld on such evidence. The appeal is allowed and the order of conviction and sentence is hereby quashed and set aside. The appellant is ordered to be released forthwith.

#. Mr. Pardiwala submitted that it is sorry state of affairs that the accused has almost undergone the sentence and now he hardly requires to undergo the rigorous imprisonment of 6 months, he will get his liberty back. He submitted that this is a fit case wherein the Court should have awarded compensation as the appellant was required to remain in prison for no fault of his own and there is clear violation of Article 21 of

the Constitution of India. We would not express any opinion, but it would be for the appellant to take appropriate proceedings before the appropriate forum, if so advised.

[B.C. PATEL, J.] [A.L. DAVE, J.]

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